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EXAMINER

MEREK, JOSEPH C

| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,451

Applicant(s)

MERCIER ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It has not been adequately disclosed as to what is intended by the term oblique. Applicant has not defined the term in the specification or set forth how the projections are oblique with respect to the surface from which they project. Moreover, applicant argues that the term is clear in light of the specification. This is not accurate since the specification does not define the term or specify what structure is required to satisfy the limitation "oblique".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 7, 16, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 4, 7, and 16, it has not been adequately disclosed as to what is intended by the term oblique. It is not clear what

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structure is required by oblique. It is not clear what is being claimed. Claim 20 recites the limitation "the inside surface-side attachment projections are oblique with respect to the inside surface of the lid" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. The inside surface-side attachment mechanism" has not been set forth.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9, 11-14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Abrums (US 5,586,656). Regarding claim 1, see Figs. 1-5 where the structure is shown. See specifically Figs. 3a and 4, where the lid can be engaged with the bottom of the container in an inverted position with the first attachment mechanism 38 and second attachment mechanism 58. See Fig. 4, where the lids have the recess in the top (64a, 64b, or 64c) for receiving the stacked container. The part surrounding the recess is a projection with respect the recessed portion and is the inner set of one or more projections. The outer set of one or more projections is the upstanding projection located on the periphery of the upper surface of the lids 62a, 62b, or 62c). The inner and outer sets are the third attachment mechanism. See Figs. 3a and 4, where 62 the third attachment mechanism 62 is engageable with the first attachment mechanism 38

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as seen by the two smaller containers stacked one on top of each other. Regarding claim 2, see Fig. 2 where 38 is the first attachment projection. Regarding claim 5, see Fig. 3a where the second attachment projection is 58 and protrudes from the inside surface of the lid. Regarding claims 9 and 18, see Fig. 2a where the circumferential walls 56 and 54a have no protrusions on their exterior surfaces. Regarding claim 11, see Figs. 3a and 4 where the lid is attachable to the bottom inverted via the first second and second attachment mechanisms. The smaller container is attachable to an outer surface of a lid via engagement of the container-side attachment mechanism and the inner set of one or more attachment projections and is not engageable with the outer set of one or more attachment projections. The larger container is attachable to the outside surface of at least one of the lids via engagement of the container-side attachment mechanism and the outer set of one or more attachment projections. As seen in Fig. 4, the lid of the larger container 20c will hold the larger container on top on the outer attachment projection just as the smaller lid receives the smaller container stacked thereupon. Regarding claim 12, as it is best understood, see Fig. 3a where the lid is nested to the bottom of the container. Regarding claim 13, see Fig. 5, where the lids of the interior containers are attached to the bottom of each container. As seen in Fig. 4, the lid of the largest container can be engaged with the open top of the largest container though this is not required by the optionally statement. Regarding claim 14, see Figs. 3a, 4, and 5, where the container-side attachment mechanism is the projection 38 that extends from the bottom of each container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 6, 7, 15, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Roop (US 2,695,115). Regarding claims 3, 4, 15, and 16 (as claim 16 is best understood), Abrums does not teach the first attachment mechanism or container-side attachment mechanism is a plurality of projections or that the projections are oblique with respect to the bottom surface. Roop, as seen in Fig. 1-6, teaches stacking and nesting containers similar to Abrums where there are a plurality of projections that are oblique with respect to the bottom surface. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic.

Regarding claim 6 and 7, Abrums does not teach the second attachment mechanism is a plurality of projections or that the projections are oblique with respect to the inside or outside surface of the lid. Roop, as seen in Fig. 1-6, teaches stacking and nesting container similar to Abrums where there are a plurality of projections that are oblique with respect to the outer surface of the lid. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an

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alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic. Regarding claim 20, as it is best understood, Abrums does not teach that all the attachment projections are oblique with respect to the surfaces from which they project. Roop, as seen in Fig. 1-6, teaches stacking and nesting container similar to Abrums where there are a plurality of projections where all of the projections are oblique with respect to the surface from which they project. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Fritz (US 5,423,453). Regarding claims 8 and 17, Abrums does not teach that the container is transparent. Fritz teaches a similar container that is transparent. It would have been obvious to employ the transparent material of Fritz in the container of Abrums so that the contents could be seen from the exterior of the container.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Andress et al (US 5,356,026). Regarding claims 10 and 19, Abrums teaches a ridge in the container but does not teach the one or more notches provided in the ridge. Andress et al as, seen in Fig. 1, teaches at least one notch in a

ridge. It would have been obvious to employ the notch of Andress et al in the container of Abrums to make it easier to remove the lid as taught by Andress et al.

Response to Arguments

Applicant's arguments filed 3/17/03 have been fully considered but they are not persuasive. The Abrums reference teaches an inner and outer projection set where each set has one projection. This structure is shown in Fig. 4 of Abrums.

Applicant argues that the term oblique when interpreted in light of the specification is clear in defining that the projections as a whole as oblique with respect to the claimed surfaces. This is not accurate, as the specification does not define the term oblique or explain how it relates to the projections. The term oblique broadly defined is non-parallel or non-perpendicular. This broad definition of the term includes the structure of Roop where the exterior surfaces of the projections are oblique with the respect to the inner or outer surfaces and therefore the projections of Roop are oblique with respect to the surface from which they project. The specification does state that the projections are angled toward the center of the container or away from the center of the container. The claims should use this language as set forth in the specification.

Conclusion

This is a non-final action since the Abrams reference teaches the amendment suggested by the examiner and due to the new 112 rejections.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mason, Jr. is cited for teaching inner and outer sets of attachment projections on the top lid surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read 'Joseph C. Merek', is written over the typed name and date.

Joseph C. Merek
June 1, 2003